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No. 05-1529

In The

Supreme Court of the United States

NORAH THURMAN,

Petitioner,

v.

THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE,

Respondents.

On Petition For A Writ Of Certiorari To The State Of Louisiana Court Of Appeal, First Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

I. Rule 10 Does Not Suggest That Granting Ms. Thurman's Petition Is Inappropriate.

In their opposition brief, the defendants argue that there is no compelling reason to grant Ms. Thurman's petition, relying on Rule 10's statement that "a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Defendants incorrectly state that Ms. Thurman's petition asserts merely the misapplication of a properly stated rule of law. The defendants' overly simplistic analysis runs like this: The court below relied on this Court's rulings in *Ewing* and *Horowitz*; Ms. Thurman cites *Ewing* and *Horowitz*; therefore, Ms. Thurman "agrees that the First Circuit properly stated the controlling rule of law, she simply believes the First Circuit misapplied that law." Nothing could be further from the truth. The fact that the court below cited or even discussed the correct cases does not necessarily mean that the court below properly stated the rules of law set forth therein.

Ms. Thurman very clearly argues that the First Circuit failed to properly state the rule of law set forth in *Horowitz*. On page 12 of her petition, Ms. Thurman asserts that the First Circuit improperly stated the test of *Horowitz*, by omitting "an integral part of the equation." This is an argument that the court below failed to properly state the controlling rule of law– not that the court merely misapplied a properly stated rule of law.

Similarly, at pages 15-16 of her petition, Ms. Thurman argues that the First Circuit failed to properly state the rule of law set forth in *Ewing*, by leaving out the finding

that triggers the application of *Ewing's* standard of deference to an academic decision. At page 15, Ms. Thurman expressly states, "Again, as with *Horowitz*, the First Circuit's previous ruling cites and relies on an incomplete version of this Court's holding." With regard to both *Ewing* and *Horowitz*, Ms. Thurman argues that the court below misstated the controlling rule of law– not that the court misapplied a properly stated rule of law.

In addition, Ms. Thurman argues that the *Ewing* ruling incorporates the definition of a "professional" as set forth in *Youngberg v. Romeo*, 457 U.S. 307 (1982), and that the court below failed to properly state the controlling rule of law by not taking into account this definition.

Finally, with regard to the "law of the case" doctrine, Ms. Thurman's petition could not be more clear. On page 23 of her petition, she quotes a passage from the ruling of the court below and then states, "There is no other way to say it: this is simply an incorrect statement of law." The defendants' argument that Ms. Thurman argues only that the court below misapplied properly stated rules of law is clearly incorrect.

II. Factual Issues Surrounding the Alleged January 1998 Meeting.

The defendants allege that Ms. Thurman's committee met in January 1998 to fail her revised dissertation. This is the meeting during which the committee was to have followed *Horowitz* and *Ewing* in affording Ms. Thurman due process. Ms. Thurman has stated that "no one knows the date of the alleged meeting" and that "there are no records or notes of this meeting." Defendants say, "These

statements are false, and Thurman knows they are false." (Opp. Brief, footnote 2).

Regarding the date of the alleged meeting, the defendants here state that the meeting was held on January 28, 1998, but there is no support in the record for this proposition. In fact, Hoffman (the committee chair) could testify only that the meeting "would have been within a few days" of his January 28 letter to Ms. Thurman. The examination card is dated January 29. No one has testified by deposition or affidavit to a definitive date of the alleged meeting.

Regarding the lack of any records or notes of the meeting, the fact is that Hoffman testified that he did not make any notes during the meeting that he kept. No one has testified by deposition or affidavit that there are any records or notes of the meeting, nor have any been produced, other than the unhelpful examination card, which tells nothing about when the meeting took place, where it took place, who was present, or what was discussed. We know only that Ms. Thurman was not present in the meeting to defend her work product.

Ms. Thurman stands by her statements regarding the alleged January 1998 meeting, and is dismayed that the defendants continue to refer to them as "false allegations."

III. Law of the Case.

The defendants elected not to address Ms. Thurman's arguments regarding the inapplicability of the "law of the case" doctrine in this situation, choosing instead to cite old decisions regarding "due process" and to note that the court below ruled in their favor. There really is no legal support for the application of "law of the case" under these

circumstances; presumably if there were the defendants would have cited and discussed it. The court below simply got it wrong. The defendants' half-hearted argument on this point betrays the weakness of the lower court's ruling.

CONCLUSION

For the reasons set forth herein and in Ms. Thurman's original petition, this Court should grant the writ and reverse the lower court rulings.

Respectfully submitted,

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